Detroit Newspaper Agency and The Detroit Free Press, Inc. *and* Newspaper Guild of Detroit, Local 22, of the Newspaper Guild, AFL–CIO–CLC. Case 7–CA–35452

June 30, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

On October 26, 1994, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions for the following reasons, and to adopt the recommended Order.

We agree with the judge that the Respondent[1] violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with a complete copy of Ernest King's 1992 environmental audit. The material facts are undisputed. In 1992, Ernest King, manager of environmental affairs for Knight-Ridder, Inc., and Lynn Straughn, environmental director for Gannett Co., Inc., conducted an environmental audit of the Respondent's workplaces covering such matters as safety records, hearing conservation records, bloodborne pathogen procedures, and emergency response records. The Union (the Charging Party) requested in writing on October 11, November 18, and December 30, 1993, that the Respondent provide it with a copy of the audit. On January 13, 1994, the Respondent denied the request, stating, ''Unfortunately, the Ernest King report is not available. According to the September 27, 1993 Business Monday article, Mr. King would not release his report.'' The Respondent did not offer to accommodate the Union's request through other means. Shortly before the hearing, the Respondent did furnish the Union with a highly redacted copy of the audit.

I. RELEVANCY

An employer has a statutory obligation to supply information that is potentially relevant and will be of use to the union in fulfilling its responsibilities as exclusive bargaining representative. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). The judge found, and the Respondent does not dispute, that health and safety matters regarding the unit employees' workplaces are of vital interest to the employees and are, thus, generally relevant and necessary for the Union to carry out its bargaining obligations. We agree. Indeed, ''[f]ew matters can be of greater legitimate concern.'' *Minnesota Mining & Mfg. Co.*, 261 NLRB 27, 29 (1982), enfd. sub nom. *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348 (D.C. Cir. 1983). Furthermore, the Respondent has contractually recognized the relevancy of health and safety matters. In a side letter, included in the printed version of the 1992–1995 bargaining agreement between the Detroit Free Press and the Union, the parties agreed:

> This letter will confirm the parties' intent to meet as often as possible to consider, discuss and attempt to resolve all issues relating to the employer-employee relationship, *including health and safety issues*, between the Publisher and employees represented for the purpose of bargaining by the Union. [Emphasis added.]

Accordingly, we conclude that the requested audit is relevant.

Once it is established that an employer has failed to timely furnish potentially relevant information requested by a union, the employer will be found in violation of Section 8(a)(5) and (1) of the Act unless it establishes a valid reason why it did not timely furnish the information. In its exceptions, the Respondent attempts to supply several reasons: it contends that the Union had the information available to it but in a different form, that the assessments, conclusions, and recommendations redacted from the audit are confidential, and that its confidentiality interests outweigh the Union's need for the information. For the following reasons, we reject the Respondent's contentions and agree with the judge that the Respondent was and is obligated to furnish the Union with an unredacted copy of the requested audit.

II. AVAILABILITY IN DIFFERENT FORM

Shortly before the hearing began, the Respondent did furnish the Union with a redacted copy of the King audit. The redacted copy, however, omitted all assessments, conclusions, and recommendations. Beyond identifying areas covered, the redacted audit contained little information of value to the Union. It is apparent that the assessments, conclusions, and recommendations are what gives the audit useful meaning. The redacted audit did not contain raw data from which the Union could reach its own conclusions. Rather, it is what was blacked out, i.e., redacted, that contains the essential information. As one of many possible examples, at page 18 the audit states, ''The environmental

[1] The Detroit Newspaper Agency is a partnership that handles selling, advertising, printing, and distribution of two otherwise independent newspapers: The Detroit Free Press (a Knight-Ridder, Inc. newspaper) and The Detroit News (a Gannett Co., Inc. newspaper). The Detroit Newspaper Agency and The Detroit Free Press, Inc. are collectively the Respondent here.

assessment indicated that The Detroit Newspaper Agency toxic chemicals emissions were [a blacked out word] the reporting requirement of section 313.'' It is obvious that essential information, whether the Respondent was above or below toxic emission standards, was withheld from the Union.[2] Furthermore, the Respondent did not even furnish the Union with the redacted copy until some 7 months after its refusal. Once a union has made a good-faith request for information, an employer must provide relevant information reasonably promptly in useful form. *General Electric Co.*, 290 NLRB 1138, 1147 (1988). We find that the redacted copy of the audit is both too little and too late to meet the Respondent's statutory obligation.

The Respondent also contends that the wide variety of information about environmental, health, and safety matters it has shared with the Union over the past few years satisfies its obligation to furnish the requested audit. The Respondent, however, has failed to show that this other information duplicates the information in the requested audit. From all we can tell, the audit may well have touched on new matters or may have contradicted other reports. Even if the information were cumulative, it would remain relevant. Cumulative information on such vital matters as health and safety would serve to identify the most pressing problems, to demonstrate any continuing problems, and to aid the Union in formulating a rational response. An employer is obligated to furnish a union with information that would help the union make an informed judgment about the problem the information addresses. *General Motors Corp. v. NLRB*, 700 F.2d 1083, 1088 (6th Cir. 1983), enfg. 257 NLRB 1068 (1981). Accordingly, even assuming that the Respondent has previously provided the Union with similar information, we find that the Respondent has failed to show that the other information satisfies its obligation to furnish the requested audit.

The Respondent further contends that the Union is free to make its own safety inspection using the other information and the redacted audit as a basis for that investigation. The Respondent, however, did not offer this opportunity to the Union when it refused to furnish the requested audit. Furthermore, this is not the form in which the Union requested the information, and the requested audit is readily available to the Respondent. An employer's obligation to furnish relevant information is not excused merely because a union may have alternative sources for the information. *New York Times Co.*, 265 NLRB 353 (1982); *Colgate-Palmolive Co.*, 261 NLRB 90, 92 fn. 13 (1982), enfd. sub nom. *Oil Workers Local 5-114 v. NLRB*, 711 F.2d 348 (D.C. Cir. 1983); and *Kroger Co.*, 226 NLRB 512, 513 (1976) (a ''union is under no obligation to utilize a burdensome procedure of obtaining desired information where the employer may have such information available in a more convenient form''). See also *ASARCO, Inc. v. NLRB*, 805 F.2d 194, 198 (6th Cir. 1986) (''availability of the requested information from another source does not alter the employer's duty to provide readily available relevant information to the bargaining representative'').

[2] This one word was imperfectly blacked out and on careful examination reads ''below.'' This was one of the few instances in which the blacking-out of the text was ineffective.

III. CONFIDENTIALITY

A. *Timeliness*

The Respondent asserts that the information requested is confidential. We reject this contention. The Board has found that substantial claims of confidentiality may justify refusals to furnish otherwise relevant information. See, e.g., *Postal Service*, 306 NLRB 474 (1992) (names of witnesses to drug transactions); *General Dynamics Corp.*, 268 NLRB 1432 (1984) (study made in preparing for pending litigation); *Minnesota Mining & Mfg. Co.*, supra at 27 (trade secrets); and *Johns-Manville Sales Corp.*, 252 NLRB 368 (1980) (individual medical records and disorders).[3] Blanket claims of confidentiality, however, will not be upheld. *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991). Also, confidentiality claims must be timely raised. *Gas Spring Co.*, 296 NLRB 84, 99 (1989) (claim belatedly raised and brought up as an afterthought not upheld). The reason a confidentiality claim must be timely raised is so that the parties can attempt to seek an accommodation of the employer's asserted confidentiality concerns. *Tritac Corp.*, 286 NLRB 522 (1987) (employer ''cannot simply raise its confidentiality concerns, but must also come forward with some offer to accommodate both its concerns and its bargaining obligation''); *Pennsylvania Power Co.*, supra at 1105 (''party refusing to supply information on confidentiality grounds has a duty to seek an accommodation''). Here, the Respondent did not raise its confidentiality claim when it initially refused to furnish the requested audit but apparently first made the claim during or shortly before the August 30, 1994 hearing. Furthermore, the Respondent failed to timely seek an accommodation with the Union of its confidentiality claim. Accordingly, we find that the Respondent failed to timely raise its claim that the requested information was confidential.

B. *Prepared for Litigation*

The Respondent contends that the audit is confidential because it was prepared in anticipation of litigation. We disagree. The Board has found that information gathered in response to specific legal actions is

[3] See also *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979) (individual psychological aptitude test scores).

privileged from disclosure. *General Dynamics*, supra, 1432. The mere potential for litigation does not constitute a legitimate claim of confidentiality. *New England Telephone Co.*, 309 NLRB 196 (1992). Furthermore, as the Board has held, ''The Party asserting the claim of confidentiality has the burden of proof.'' *Washington Gas Light Co.*, 273 NLRB 116 (1984).

The Respondent's sole witness, Ernest King, testified that the audit was part of the annual audit of safety matters undertaken in all Knight-Ridder facilities. Thus, the testimony shows that the audit was prepared in the ordinary course of the Respondent's business, rather than in anticipation of litigation. The Respondent's suggestion that the Union might pursue matters arising from the requested audit through litigation or complaints to Federal or state safety agencies has no solid foundation. There is evidence that the Union has brought certain ergonomic matters relating to alleged repetitive motion stress problems to the attention of the Michigan health and safety agency. The audit, however, does not concern such matters. King testified ''no'' when asked on direct examination whether the audit related to anything in the area of ergonomics. Thus, we find that the Respondent has failed to establish its asserted claim of confidentiality of the requested audit. At best, the claim is based on mere speculation.[4] Accordingly, we reject the Respondent's claim that the requested audit should be considered as a confidential matter in preparation for litigation.

C. *Self-Critical Report*

The Respondent additionally contends that the audit is confidential because it is an internal, self-critical report. We disagree. To establish a legitimate confidentiality claim, the Board requires more than what the Respondent has shown. Confidential information is limited to a few general categories: that which would reveal, contrary to promises or reasonable expectations, highly personal information, such as individual medical records or psychological test results; that which would reveal substantial proprietary information, such as trade secrets; that which could reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses; and that which is traditionally privileged, such as memoranda prepared for pending lawsuits. See cases cited in sections III,A and B, above. The requested audit falls outside these general categories.

The Respondent draws a distinction between internal and external reports. It states that it did not claim confidentiality for reports from outsiders, such as insurance companies and environmental consultants.[5] The Respondent argues that findings of outsiders, in contrast to the findings of officials from parent companies, are not likely to be viewed as admissions of error. The Respondent contends that internal reports are confidential because they must be able ''to recommend, criticize, warn, threaten or use any other means at their disposal to cause Respondent's managers to achieve the highest possible levels of health and safety for Respondent's employees.''

The Respondent's argument is too sweeping. Much, if not most, of the relevant information an employer is required to furnish to a union is internally generated. Furthermore, the Respondent's argument is inconsistent with the whole theory of the Act. Because employee health and safety are mandatory subjects of bargaining,[6] Section 8(a)(5) requires the Respondent to confer and negotiate with the Union on these matters. Thus, the Act contemplates that achieving the ''highest possible levels of health and safety'' is to be accomplished jointly with the Union, not unilaterally by the Respondent.

In addition, the Respondent's confidentiality contentions are not supported by the record. Ernest King, who was involved in preparing the requested audit, did not testify that the audit criticized, warned, or threatened anyone. Rather, King testified more generally that he would alter the way he put the reports together if he were aware they would be given to the Union:

> Because I write these reports in the manner that I try to get action. If I write them in a very strong manner there are a lot of opinions in these reports based on my opinion of things and I would have to drastically alter the way I put these reports together.

King did not, however, testify that he would alter the substance, as opposed to the tone, of the audit. To this extent, we agree with the judge's finding, with which the Respondent disagrees, that King ''never explained how the report would be different if directed to management alone or directed to management with disclosure to the Union.''

The Respondent also relies on *ASARCO, Inc. v. NLRB*, supra, denying enf. in pertinent part to 276 NLRB 1367 (1985), and argues that the requested audit is confidential because its disclosure, if anticipated, would result in the report's being watered down or not written. Although we continue to adhere to the principles expressed in the Board's decision in *ASARCO*, we also find that the Respondent's reliance on the court's decision in that case is misplaced. The court found (id. at 199) that ASARCO's self-critical

[4] The Union, as well as the Respondent, was contractually obligated to pursue any safety and health matters through negotiations pursuant to the parties' side agreement on the negotiability of health and safety matters, and, even regarding matters that the Union eventually brought to the attention of the state health and safety agency, the Union first attempted to resolve the matters through direct negotiations with the Respondent.

[5] The Union has received such reports.

[6] *Oil Workers*, supra at 360.

reports, which were prepared after a serious accident,[7] ''contain speculative material and opinions, criticisms of persons, events, and equipment, and recommendations for future practices.'' In this case, there is no contention that the requested audit was prepared as the result of any particular incident. Rather, as previously found, the audit is part of Knight-Ridder's annual audits of all its facilities. Furthermore, although the audit made recommendations, there is no evidence that it contained speculative material or criticisms of persons or events. King did not so testify.

Because the Respondent's contentions are unsupported by the record, we find that the Respondent has merely made a speculative or blanket confidentiality claim. Blanket claims of confidentiality will not be upheld. *Pennsylvania Power Co.*, supra at 1105; *Washington Gas Light Co.*, supra at 117. Accordingly, we find that the Respondent has failed to meet its burden and conclude that the requested audit has not been shown to contain confidential information.[8]

D. *Balancing Test*

The Respondent contends that the judge erroneously failed to balance the Union's interest in disclosure of the requested audit with the Employer's interest in confidentiality. We disagree. A union's interest in arguably relevant information does not always predominate over other legitimate interests. In determining whether an employer must comply with a union's request for relevant but assertedly confidential information, the Board is required to balance a union's need for the information against any legitimate and substantial confidentiality interests. *Detroit Edison Co. v. NLRB*, supra at 301; *Washington Gas Light Co.*, supra at 116. To invoke a balancing test, however, an employer must first prove its confidentiality claim. *Resorts International Hotel*, 307 NLRB 1437, 1438 (1992). Because the Respondent, as found above, has failed to establish its confidentiality claim, a balancing test is neither necessary nor proper.

Even assuming that the Respondent had raised a legitimate confidentiality claim that would require a balancing test, we would strike the balance in favor of the Union and order the Respondent to furnish the Union with an unredacted copy of the requested audit. In support of its contention that the balance should be struck in its favor, the Respondent relies on the court's decision in *ASARCO*, supra at 194. We find that *ASARCO* is also distinguishable on this issue. The relevant issue in that case concerned the union's request for an extensive self-critical report the employer made after a serious accident and for the purpose of improving safety and preventing future similar mishaps. The court, in its final analysis, held (id. at 200) that ''access to ASARCO's internal report and self-critical thinking is not relevant or reasonably necessary to the Union's representative duties.'' Thus, the ultimate holding of the court goes to whether the information was relevant and does not depend on making a balancing determination.

The court additionally found (id. at 199) that the report contains speculative material and opinions, criticisms of persons, events, and equipment, and recommendations for future practices. The court referred (id. at 199) to testimony that ''if ASARCO were required to divulge these reports to the Union, much of their contents would have been omitted, adversely affecting, if not nullifying, the report's value.'' The court further referred (id. at 199) to testimony that the report was made in anticipation of litigation that frequently arises after serious accidents. The court found (id. at 200), ''The practice of uninhibited self-critical analysis, which benefits both the union's and employer's substantial interest in increased worker safety and accident prevention, would undoubtedly be chilled by disclosure.'' In addition, the court found (id. at 200) that the union had all the factual information regarding the accident available to it by the union's participation in the investigation of the accident and the court's requiring the employer to give the union access to the mine and the photographs relating to the accident.

In contrast, this case involves an annual health and safety audit routinely made by the parent corporation in all Knight-Ridder facilities, rather than a report in response to a specific health and safety problem, let alone an accident causing an employee's death. Although the audit's recommendations were undoubtedly made to improve safety, there is no evidence that the audit contained speculative materials or criticisms of persons, events, and equipment. And there is no testimony, as in *ASARCO*, that the substance, as opposed to the tone, of the audit would be changed or that it was prepared in anticipation of litigation. In addition, the record here fails to support a finding that the Union had available to it all the factual information in the audit. The Union was not invited to, and did not, participate in the audit or accompany King and Straughn when they made the audit, and the Respondent has not offered or made available to the Union the records that King and Straughn reviewed. These differences from *ASARCO* are significant and call for a result different from *ASARCO*.

[7] An employee died after apparently driving his tractor over a 30-foot dropoff at a mine site.

[8] Contrary to our colleague's partial dissent, we would not give the Respondent yet another opportunity to bargain over its asserted confidentiality claims. We have found above that, unlike the situation in *Minnesota Mining*, the case relied on by the dissent, the Respondent's confidentiality claims are unsupported by the record and are at best speculative. In these circumstances, we do not believe that it would be appropriate to force the Union to go back to the bargaining table to obtain the information to which it is entitled.

As previously stated, we find that the balance between the interests of the Respondent's confidentiality assertions and the Union's right to relevant information should be struck in favor of disclosure to the Union. Although we recognize that a union's interest in information about an accident leading to the death of an employee is powerful, we also recognize that the Union's interest here in the requested audit is substantial.[9] Furthermore, disclosure of the audit to the Union would not undermine the purpose of the audit. King testified that his purpose is to ''get action''; local union access to the information would also serve to ''get action.'' Although King's ''strong'' words might, if revealed to the Union, embarrass the Respondent's management, preventing such embarrassment has little claim to confidentiality. Clearly it is outweighed by the Union's substantial interest in health and safety matters. Accordingly, we find in all the circumstances that the balance between the Respondent's assertion of confidentiality and the Union's right to potentially relevant information should be struck in favor of the Union.

Conclusion

For the foregoing reasons, we find that the Respondent should be ordered to furnish the Union with a complete and unredacted copy of the requested audit. Accordingly, we shall adopt the judge's recommended Order to this effect.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Detroit Newspaper Agency and The Detroit Free Press, Inc., Detroit, Michigan, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER STEPHENS, dissenting in part.

I agree with my colleagues that the Respondent violated Section 8(a)(5) and (1) of the Act by withholding the King report in its entirety until after complaint issued in this case, more than 7 months after the Union requested it. I further agree, for the reasons stated by the majority, that the withholding of factual material concerning workplace conditions is not immunized by a showing that facts it contains can also be gleaned from various other sources.[1] I would not, however, order the Respondent to turn over the complete unredacted report. Rather, I would order the Respondent to turn over to the Union all portions of the report relating to the conditions of the workplace except for judgments on the performance of the Respondent's managers or other purely judgmental statements and recommendations; and following the approach of the Board in *Minnesota Mining & Mfg. Co.*, 261 NLRB 27, 32 (1982), enfd. sub nom. *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348 (D.C. Cir. 1983), I would require the Respondent to bargain with the Union over a procedure for protecting the confidentiality of any such matters in the disclosure of the report.

[9] *Minnesota Mining & Mfg. Co.*, supra at 29.

[1] *Service Employees Local 144 (Jamaica Hospital)*, 297 NLRB 1001 fn. 2 (1990).

Cynthia L. Beauchamp, Esq., for the General Counsel.
John B. Jaske, Esq., of Arlington, Virginia, and *John Taylor, Esq.*, of Detroit, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. On January 20, 1994, the charge in Case 7–CA–35452 was filed by the Newspaper Guild of Detroit, Local 22, of the Newspaper Guild, AFL–CIO–CLC (Union), against the Detroit Newspaper Agency (Respondent DNA), and the Detroit Free Press, Inc. (Respondent Free Press).

On March 25, 1994, the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint which alleges that Respondents violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) when they failed and refused to comply with an information request from the Union for a copy of a report of an environmental audit conducted by Ernest King.

Respondents filed an answer in which they denied violating the Act in any way.

A hearing was held before me in Detroit, Michigan, on August 30, 1994.

On the entire record in this case, including posthearing briefs submitted by the General Counsel and Respondents, and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent DNA is organized as a general partnership under Michigan law. Respondent Free Press and The Detroit News, Inc. are, and have been at all times material, copartners doing business under the trade name and style of Detroit Newspaper Agency.

At all material times, Respondent DNA has maintained an office and place of business at 615 West Lafayette, Detroit, Michigan, and has been engaged in the publishing operations of all nonnews and noneditorial departments of Respondent Free Press and The Detroit News as a unified integrated business, as agent for, and for the benefit of both newspapers and is responsible for selling, advertising, printing, and distribution of the two newspapers.

At all material times Respondent Free Press, a Michigan corporation with an office and place of business at 321 West Lafayette, Detroit, Michigan, has been engaged in the operation of the news and editorial departments of a daily newspaper.

During 1993, Respondent DNA, in the course and conduct of its business operations described above, had gross revenues in excess of $500,000, and purchased and received

newspaper print valued in excess of $50,000, which was shipped to its Michigan facilities directly from points located outside the State of Michigan.

During 1993, Respondent Free Press, in the course and conduct of its business operations described above, derived gross revenues in excess of $200,000 and held membership in/or subscribed to various interstate news services and published various nationally syndicated features and advertised various nationally sold products.

Respondents admit, and I find, that each of the Respondents has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondents admit, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *Overview*

The Detroit News Agency (DNA) was formed under the Newspaper Preservation Act and handles all noneditorial functions for two Detroit newspapers, i.e., the Detroit Free Press and the Detroit News, e.g., business advertising, circulation, etc.

The Union represents certain employees of both the Detroit Newspaper Agency (DNA) and the Detroit Free Press. More specifically the Union represents:

> 1. All full-time and regular part-time janitors employed by Respondent DNA, including working supervisors and Respondent DNA employees formerly classified as machinist helpers, heavy cleaners, and cleaners; but excluding managerial employees, confidential employees, guards and supervisors as defined in the Act, and
>
> 2. All full-time and regular part-time employees in the editorial and business office departments of Respondent Detroit Free Press; but excluding the classifications listed in a document entitled ''Exemptions,'' as updated February 7, 1994; but excluding guards and supervisors as defined in the Act.

Since about 1990, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the DNA unit and has been recognized as such representative by Respondent DNA. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from date of ratification through April 30, 1995.

Since about 1930, and at all material times, the Union (Charging Party) has been the designated exclusive collective-bargaining representative of the Detroit Free Press unit and has been recognized as such representative by Respondent Free Press. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from May 1, 1992, to April 30, 1995.

At all times since 1990, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the DNA unit.

At all times since 1930, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Free Press unit.

It is undisputed that on October 11 and December 30, 1993, the Union requested in writing that the Respondents provide to it a copy of a report prepared by Ernest King following an environmental audit he conducted in the fall of 1992 at the Detroit Newspaper Agency and the Detroit Free Press.

Respondents failed and refused to turn over the report in its entirety, claiming that it is the kind of internal self-critical report that they should be permitted to keep confidential, citing the case of *ASARCO, Inc. v. NLRB*, 805 F.2d 194 (6th Cir. 1986). At the hearing before me, Respondents introduced into evidence as Respondent's Exhibit 1 a redacted version of the King report. The report consists of 26 pages and a cover sheet. All or part of 19 pages are blacked out and unreadable. According to Respondents, the blacked out areas of the report cover the conclusions and recommendations of Ernest King.

All parties concede that the Union has an interest in health and safety, but the Union insists, contrary to Respondents, that it needs to be able to review the King report in its entirety because the contents of the report are necessary and relevant to the performance of its functions as a collective-bargaining representative, especially considering that bargaining for new contracts for the employees it represents at both the Detroit Newspaper Agency (DNA) and the Detroit Free Press will begin in late 1994 or early 1995 as both contracts expire on April 30, 1995. A purpose of King's report was ''to reduce liability overall for accident and injury.''

The sole issue in the case is whether Respondents violated Section 8(a)(1) and (5) of the Act when it refused to turn over King's report.

B. *Discussion and Analysis*

Luther Jackson Jr., an official of the Union, testified for the General Counsel. He was a very impressive witness and I credit his testimony in its entirety.

His testimony reflects that since at least 1985 the Union has been very concerned about health and safety issues for the employees it represents at the DNA and the Detroit Free Press. Jackson testified, for example, that in 1990 the Union conducted a survey among the employees it represents and ascertained that many were suffering from repetitive strain injuries apparently caused by working in front of video display terminals (VDTs). The Union also received complaints about the configuration of the VDTs and the furniture used by the employees working at the VDTs. The Union was also concerned about ventilation, and asbestos detection, removal, and encapsulation, VDT screen radiation, repetitive strain injury hazards for maintenance employees, photographic chemical hazards, and the Union also wanted a nurse assigned back into the Detroit Free Press building.

The Union also expressed its concern to management about new furniture and work stations at the Detroit Free Press, which had undergone some renovation in 1992. A number of employees complained to the Union about the lack of easily adjustable furniture at their work stations. The Union was interested in the field of ergonomics, i.e., the science of adapting furniture, equipment, and machinery to people, and the Union let management know this. In an

ergonomic survey conducted by the Union some employees complained about back problems, wrist problems, etc., caused by the furniture provided to them at their work stations.

In September 1993, certain maintenance employees complained to the Union about asbestos exposure on the job. Another incident which concerned the Union involved a graphics intern cutting himself on the job with a knife and the issue and concerns that incident caused.

The Union learned that Liberty Mutual, the workers' compensation carrier for the Free Press, had visited work stations and done work station analyses. The Union requested and received a copy of the report prepared by Liberty Mutual. On another occasion the Union requested and received permission from Respondents to inspect OSHA forms the Respondents maintained pursuant to Federal law. With respect to the Liberty Mutual report and the OSHA records Respondents fully cooperated with the Union.

In the fall of 1993, the Union became aware from a newspaper article in the Detroit Free Press on September 27, 1993, that two environmental audits had been conducted at the Detroit Newspaper Agency and or Detroit Free Press. One had been conducted by Donald A. Hensel of the Newspaper Association of America (NAA), a trade organization, and the other had been conducted by Ernest King.

Ernest King is an employee of Knight-Ridder, Inc., the parent company of the Detroit Free Press, and apparently its top health and safety person. Knight-Ridder, Inc. owns approximately 29 newspapers, one of which is the Detroit Free Press.

The Union requested a copy of Donald Hensel's 67-page report prepared for the NAA, management's response to Hensel's report, and a copy of Ernest King's environmental audit. The Union received a copy of Hensel's report and management's response to it, but Respondents would not release a copy of King's report to the Union.

As noted above, a redacted copy of King's report was received in evidence as Respondent's Exhibit 1. The table of contents of King's 26-page report reflects that the following subject areas, inter alia, were covered: hearing conservation program records, safety program and records, waste management program and records, bloodborne pathogens, and emergency response program and records.

According to Luther Jackson, the Union wanted a copy of Ernest King's report because it was very interested in getting as much information as possible regarding the health and safety of its members, because of the prominence of Ernest King, and to prepare for negotiations for a new collective-bargaining agreement. All are extremely valid reasons.

Respondents would not voluntarily turn over all of King's report. The Respondents claim that because it is a internal self-critical report it would have a chilling effect on Respondents' inclination to do similar internal self-critical reports in the future if forced to disclose the contents of this report to the Union. Because the Hensel audit done for the NAA and the report of Liberty Mutual were not internal self-critical reports, Respondents readily disclosed those reports to the Union on its request.

Ernest King was, like Jackson, a very impressive witness. He testified for the Respondents. The only problem I had with King's testimony was his assertion that his report to his superiors would be different if disclosable to the Union. He struck me as the kind of professional who would tell it like it is regardless of who the reader of the report might be. Interestingly enough he never explained how the report would be different if directed to management alone or directed to management with disclosure to the Union on its request. King stated, by the way, that he did not cover the area of repetitive strain injuries associated with VDT use in his report.

It is well settled that ''[t]he duty to bargain collectively, imposed upon an employer by Section 8(a)(5) of the National Labor Relations Act, includes a duty to provide relevant information needed by a labor union for the proper performance of its duties as the employees' bargaining representative.'' *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979). In evaluating an employer's obligation to fulfill the union's information requests, the Board and courts apply a ''discovery type standard,'' under which the requested information need only be relevant and useful to the union in fulfilling its statutory obligations in order to be subject to disclosure. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967). Some information in the hands of management is presumptively relevant, e.g., health and safety information. As the Board stated ''Few matters can be of greater legitimate concern to individuals in the workplace, and thus to the bargaining agent representing them, than exposure to conditions potentially threatening their health, well-being, or their very lives.'' *Minnesota Mining & Mfg. Co*., 261 NLRB 27, 29 (1982).

Respondents, as noted above, rely on the Sixth Circuit decision in *ASARCO, Inc. v. NLRB*, supra, in claiming that its internal self-critical report should not be required to be turned over as the Sixth Circuit found that the report in the *ASARCO* case need not be turned over. The critical difference, however, is that in the *ASARCO* case the court found that the Union had available to it *all* relevant factual information and did not need to see ASARCO's internal self-critical investigative report. In the instant case there is no evidence that the Union has available to it *all* relevant factual information contained in the King report. Because this is so and because health and safety are so critical, I find that disclosure of the King report to the Union was necessary to and relevant for the Union to perform its duty as collective-bargaining representative.

The Sixth Circuit in *ASARCO* reversed the Board which had found the employer violated the Act in not turning over the internal self-critical report in question. What could be more important to the Union than the health and safety of its members. Turning the King report over to the Union is not the functional equivalent of the United States turning over to the German high command the details of Operation Overlord prior to June 6, 1944. The fact is that when it comes to the health and safety of the employees the Respondents and the Union are on the same side.

Accordingly, Respondents violated Section 8(a)(1) and (5) of the Act when it failed and refused to turn over to the Union in its entirety the Ernest King report on the environmental audit he conducted at the Detroit News Agency and the Detroit Free Press in the fall of 1992.

CONCLUSIONS OF LAW

1. Respondents Detroit Newspaper Agency and the Detroit Free Press are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to provide to the Union an unredacted copy of the report prepared by Ernest King following the environmental audit he conducted in the fall of 1992 Respondents unlawfully refused, and are refusing, to bargain in violation of Section 8(a)(5) and (1) of the Act.

4. The above-unfair labor practices affect commerce within the meaning of the Act.

THE REMEDY

Having found Respondents engaged in an unfair labor practice, I find it necessary to order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The order will require Respondents to furnish the Union with an unredacted copy of the King report.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondents, Detroit Newspaper Agency and the Detroit Free Press, Inc., their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with the Union by refusing to provide the Union a complete and unredacted copy of a report prepared by Ernest King following an environmental audit he conducted in the fall of 1992.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of the Union, furnish to it within a reasonable time the report referred to in paragraph 1(a), above.

(b) Post at its facilities in Detroit, Michigan, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with the Union by refusing to supply it with a complete and unredacted copy of a report prepared by Ernest King following an environmental audit he conducted in the fall of 1992.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request of the Union, furnish to it the aforementioned report by Ernest King

DETROIT NEWSPAPER AGENCY AND THE DETROIT FREE PRESS, INC.